

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|-----------------------|
| In re Terrorist Attacks on September 11, 2001 | 03 MDL 1570 (GBD)(SN) |
| | ECF Case |

This document relates to:

Ashton, et al. v. al Qaeda Islamic Army, et al., 02-cv-6977 (GBD)(SN)

-and-

All Wrongful Death Default Judgment Applications Filed Against the Taliban

**DECLARATION OF PLAINTIFF LISA O'BRIEN IN SUPPORT OF RULE
72(b)(2) OBJECTIONS TO MARCH 15 REPORT & RECOMMENDATION [ECF#8929]**

Lisa O'Brien, pursuant to 28 U.S.C. § 1746, declares under the penalty of perjury under the laws of the United States of America, that the following is true and correct:

1. I am the court-appointed personal representative of the Estate of Timothy M. O'Brien, who perished at the World Trade Center as a result of the terrorist attacks on September 11, 2001.

2. I submit this Declaration on my own behalf as the surviving spouse of Timothy M. O'Brien, and on behalf of the only other New York State designated "heirs" of my late husband, our three children: John O'Brien, Madeline O'Brien, and Jacqueline O'Brien.

3. I can affirm to the Court that my deceased husband lived with me and my three children at a private home at 16 Wishing Well Lane, Old Brookville, New York 11545 at the time of his death. I can further affirm that my children and I were the only "immediate family members" living with my husband and that no other family member lived with us (or was dependent on my husband – financially or emotionally) at the time of his death.

4. For the foregoing reasons, I ask that the Court to deem my children and me as the only “immediate family members” of Timothy O’Brien.

5. My attorney (John F. Schutty) has advised me that under New York State estate administration law, when a decedent is survived by a spouse and children, they are considered the decedent’s only “legal heirs” (New York estate administration law explicitly denies parents and siblings of a decedent any wrongful death damages under such circumstances).

6. I was originally unaware that my ex-in-laws (my deceased husband’s parents and siblings) had filed lawsuits (separate apart from mine) for alleged wrongful death damages sustained as a result of my husband’s death.

7. My attorney only recently completed a search of the MDL docket and advised me, for the first time, about the substantial wrongful death damages that were awarded against the Islamic Republic of Iran (“Iran”) and in favor of my ex-in-laws.

8. I was dismayed to learn how large the awards were to my ex-in-laws and even more dismayed to learn how these judgments affected/reduced the distribution of money from the U.S. Victims of State Sponsored Terrorism Fund (“USVSST”) to me and my children.

9. Here is what my attorney has told me about the default judgments that were awarded to my ex-in-laws against Iran:

| Non-Legal Heirs of Timothy O'Brien Awarded Solatium Damages Against Iran | | | | |
|---|---|------------------|------------------------------------|--|
| Date Action Filed | Action | Attorneys | Name (Relation to Decedent) | Solatium Awards |
| 12/18/2015 <i>Burnett</i> ECF#1 | <i>Burnett et al. v. The Islamic Republic of Iran,</i> No. 15-cv-09903 | Motley Rice LLC | Bernard J. O'Brien (Parent) | \$8,500,000 7/31/2017 ECF#3666 |
| “ | “ | “ | Marilyn O'Brien (Parent) | \$8,500,000 7/31/2017 ECF#3666 |
| “ | “ | “ | Robert L. O'Brien (Sibling) | \$4,250,000 9/6/2019 ECF#5087 |
| “ | “ | “ | Kathleen Tighe (Sibling) | \$4,250,000 7/31/2017 ECF#3666 |
| “ | “ | “ | Patrick O'Brien (Sibling) | \$4,250,000 7/29/2019 ECF#4706 |
| “ | “ | “ | Therese A. Visconti (Sibling) | \$4,250,000 4/27/2018 ECF#3986 |
| 09/04/2019 ECF#5087 | “ | “ | Kevin O'Brien (Sibling) | \$4,250,000* 9/6/2019 ECF#5087 |
| - | <i>[No DJ Filed Yet]</i> | - | Sean O'Brien (Sibling) | <i>[\$4,250,000] [No DJ Filed Yet]</i> |
| Total Solatium Damages Awarded to Non-Heirs Thus Far | | | | \$38,500,000 |

*We have been unable to determine when and if Kevin O'Brien was added as a party-plaintiff, but he was issued a default judgment award.

10. And here are the default judgment awards granted to me and my three children against Iran:

| Legal Heirs of Timothy O'Brien Awarded Solatium Damages against Iran¹ | | | | |
|---|---|------------------------------------|------------------------------------|--|
| Date Action Filed | Action | Attorneys | Name (Relation to Decedent) | Solatium Awards |
| 09/10/2002 <i>Burlingame</i> ECF#1 | <i>Burlingame, et al. v. Laden, et al.</i> , 02-cv-7230 | Law Office of John F. Schutty P.C. | Lisa O'Brien (Spouse) | \$12,500,000 01/07/2020 ECF#5452 |
| “ | “ | “ | John O'Brien (Child) | \$8,500,000 01/07/2020 ECF#5452 |
| “ | “ | “ | Madeline O'Brien (Child) | \$8,500,000 01/07/2020 ECF#5452 |
| “ | “ | “ | Jacqueline O'Brien (Child) | \$8,500,000 01/07/2020 ECF#5452 |
| Total Solatium Damages Awarded to Legal Heirs Against Iran | | | | \$38,000,000 |

11. Upon information and belief, awards against Iran were granted to non-heirs without regard to whether the statute of limitations of the Foreign Sovereign Immunities Act was satisfied (a 10-year statute of limitations). And non-heirs and heirs then proceeded into the USVSST where a limited amount of funds were available to be shared amongst claimants. Undeniably, my children and I were hurt by the award of wrongful death damages to my deceased husband's parents and siblings and resulting payments by the USVSST.

12. My attorney now has advised that my ex-in-laws also have default judgment applications for wrongful death damages against the Taliban.

13. Below is what my attorney has advised me:

¹ The Estate of Timothy M. O'Brien was also awarded economic loss damages of \$94,984,220 (ECF MDL#5376), but the U.S. Victims of State Sponsored Terrorism Fund ("USVSST") limited the legal heirs of my husband to a total cap of \$35 million (solatium plus economic loss damages) before our USVSST awards were calculated, while individual "immediate family members" were given a cap of \$20 million "for 9/11 family members who are not a 9/11 spouse or 9/11 dependent." What is undeniable is that the recoveries of parents and siblings necessarily decrease the Fund's assets and limit what is available to heirs. See USVSST website, FAQ 4.1, <http://www.usvsst.com/faq.php>.

| Non-Heirs of Timothy O'Brien Who Have Requested Solatium Damages against the Taliban | | | | |
|---|--|------------------|------------------------------------|---------------------------------------|
| Date Action Filed | Action | Attorneys | Name (Relation to Decedent) | Solatium Awards Sought |
| 04/29/2017 ECF #3663 | <i>Burnett et al. v. Al Baraka Inv. Dev. Corp., et al., No. 03-cv-9849</i> | Motley Rice LLC | Bernard J. O'Brien (Parent) | \$8,500,000 01/20/2022 ECF#7618 |
| “ | “ | “ | Marilyn O'Brien (Parent) | \$8,500,000 “ “ |
| “ | “ | “ | Robert L. O'Brien (Sibling) | \$4,250,000 “ “ |
| “ | “ | “ | Kathleen Tighe (Sibling) | \$4,250,000 “ “ |
| “ | “ | “ | Patrick O'Brien (Sibling) | \$4,250,000 “ “ |
| “ | “ | “ | Therese A. Visconti (Sibling) | \$4,250,000 |
| 10/25/2022 ECF #8679-1 | ” | ” | Kevin O'Brien (Sibling) | \$4,250,000 09/26/2022 ECF#8559 |
| “ | “ | “ | Sean O'Brien (Sibling) | \$4,250,000 “ “ |
| Total Solatium Awards Sought Against the Taliban by Non-Heirs | | | | \$42,500,000 |

| Legal Heirs of Timothy O'Brien Seeking Solatium Damages against the Taliban | | | | |
|--|---|------------------------------------|------------------------------------|--|
| Date Action Filed | Action | Attorneys | Name (Relation to Decedent) | Solatium Awards Sought |
| 09/10/2002 <i>Burlingame</i> ECF#1 | <i>Burlingame, et al. v. Laden, et al.,</i> 02-cv-7230 (now Ashton) | Law Office of John F. Schutty P.C. | Lisa O'Brien (Spouse) | \$12,500,000 08/17/2022 ECF#8386 |
| " | " | " | John O'Brien (Child) | \$8,500,000 " " |
| " | " | " | Madeline O'Brien (Child) | \$8,500,000 " " |
| " | " | " | Jacqueline O'Brien (Child) | \$8,500,000 " " |
| Total Solatium Award Sought Against the Taliban by Legal Heirs | | | | \$38,000,000 |

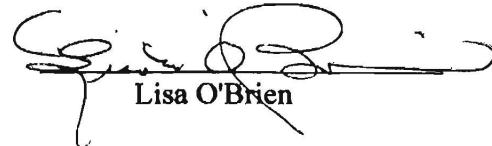
14. Again, a limited fund of money (if any) is expected to be available to all plaintiffs making claims against the Taliban. Again, awards to non-heirs, and those who have filed untimely claims, will, at a minimum, reduce the recoveries of my children and me from the Taliban and any limited fund of money that may be available.

15. I expressly object to the Court making wrongful death awards to "non-heirs."

16. I also object to the Court issuing awards to plaintiffs who have filed claims after the statute of limitations has expired. This Court apparently has previously determined that one wrongful death lawsuit, filed by any family member, protects any subsequent wrongful death lawsuit filed by any other family member of the decedent, against the statute of limitations. *See, e.g.*, ECF MDL#5095 at 1, 5096 at 1 and 5097 at 1. Please do not allow non-heirs to "piggy-back" on my timely legal action, and then reduce the wrongful death damage money paid to my late husband's estate.

Dated: New York, New York
March 28, 2023

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Lisa O'Brien

A handwritten signature in black ink, appearing to read "Lisa O'Brien". The signature is fluid and cursive, with a horizontal line drawn through it below the name.